

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RICHARD SCULLY,

Plaintiff,

-against-

ANSWER

08 Civ. 3598 (JGK)

METRO-NORTH COMMUTER RAILROAD,

Defendant.

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Defendant, Metro-North Commuter Railroad (hereinafter "Metro-North"), by its attorney, Richard K. Bernard, General Counsel, as and for its answer to the complaint of the plaintiff, alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) 1 of the complaint.
2. Admits the allegations contained in paragraph(s) 2 of the complaint.
3. Denies upon information and belief each of the allegations contained in paragraph(s) 3 of the complaint and refers all questions of law and fact to judge and jury, except admits plaintiff was employed by defendant.
4. Denies upon information and belief each of the allegations contained in paragraph(s) 4 of the complaint and refers all questions of law and fact to judge and jury.
5. Denies the allegations contained in paragraph(s) 5, 6 and 7 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. As and for a first affirmative defense, or as a defense in mitigation of damages, the defendant claims that any injuries allegedly sustained by the plaintiff were caused, in whole or in part, by reason of the culpable conduct of the plaintiff.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. As and for a second affirmative defense, the defendant claims that plaintiff failed to mitigate or otherwise act to lessen or reduce the damages alleged in the complaint.

WHEREFORE, defendant, demands judgment dismissing the complaint, together with costs and disbursements and such other and further relief as to this Court seems just and proper.

Dated: New York, New York
May 8, 2008

RICHARD K. BERNARD
GENERAL COUNSEL

By: S/
Ioana Wenchell (IW-4775)
Associate Counsel
Attorneys for Defendant
347 Madison Avenue
New York, New York 10017
(212) 340-2203

TO: Michael Flynn, Esq.
Law Office of Michael Flynn PLLC
Attorney for Plaintiff
1205 Franklin Avenue
Garden City, NY 11530
(516) 877-1234

STATE OF NEW YORK :
: ss:
COUNTY OF NEW YORK:

Laura Matthews, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and reside in Bronx County, New York.

On May 8, 2008, I served a true copy of the annexed ANSWER and RULE 7.1 STATEMENT, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

TO: Michael Flynn, Esq.
Law Office of Michael Flynn PLLC
Attorney for Plaintiff
1205 Franklin Avenue
Garden City, NY 11530
(516) 877-1234

S/
LAURA MATTHEWS

Sworn to before me this
8th day of May, 2008

S/
NOTARY PUBLIC